

## **TITLE 13. NEW MOTOR VEHICLE BOARD**

(Notice published March 22, 2019)

### **NOTICE OF PROPOSED RULEMAKING**

**NOTICE IS HEREBY GIVEN** that the California New Motor Vehicle Board ("Board"), pursuant to the authority vested in the Board by subdivision (a) of Vehicle Code section 3050 proposes to adopt the proposed regulation as described below, after considering all comments, objections, and recommendations regarding the proposed regulatory action.

### **PROPOSED REGULATORY ACTION**

The Board proposes to amend section 551.25 of Title 13 of the California Code of Regulations pertaining to substitution or withdrawal of counsel.

### **PUBLIC DISCUSSIONS PRIOR TO NOTICE**

Prior to the publication of this notice, the Board considered and adopted the proposed regulation at a noticed General Meeting held on January 24, 2019. Fourteen days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulation was mailed to all individuals and entities on the Board's Public Mailing list, Electronic Public Mailing list, and website subscription list. The agenda was also posted on the Board's website.

No comments by the public were received at the January 24, 2019, General Meeting, and no further public discussion was held prior to publication of the notice.

### **PUBLIC HEARING**

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

### **WRITTEN COMMENT PERIOD**

Any person interested, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 323-1632 or by e-mail at [danielle.phomsopha@nmvb.ca.gov](mailto:danielle.phomsopha@nmvb.ca.gov) or [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov). The written comment period closes at 5:00 p.m. on May 6, 2019. The Board will consider only comments received at the Board's offices by that time. Submit comments to:

Danielle R. Phomsopha, Staff Counsel  
New Motor Vehicle Board  
1507 21<sup>st</sup> Street, Suite 330  
Sacramento, CA 95811  
(916) 327-3129 direct line  
(916) 445-1888 main line  
(916) 323-1632 fax  
[danielle.phomsopha@nmvb.ca.gov](mailto:danielle.phomsopha@nmvb.ca.gov)

## **AUTHORITY AND REFERENCE**

Vehicle Code section 3050, subdivision (a), authorizes the Board to adopt the proposed regulation. The proposed regulation implements, interprets, and makes specific California Rules of Court Rule 3.1362, Rule 1.16 of the California Rules of Professional Conduct and Section 284 of the California Code of Civil Procedure.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The adopted mission of the Board is to: "...enhance relations between dealers and manufacturers throughout the State by resolving disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner. The adopted vision statement provides that the Board safeguard for its "constituency, a fair, expeditious and efficient forum for resolving new motor vehicle industry disputes, which ultimately improves relations and reduces the need for costly litigation and develop methods that further improve the delivery of Board services in a timely and cost-effective manner..."

The Board proposes to amend Section 551.25 to reflect recent changes made to the California Rules of Professional Conduct as referenced in the regulation and to make additional changes to ensure client confidentiality is protected.

Section 551.25(b) describes how counsel of record must obtain permission from the Board to withdraw from a protest, petition or appeal. The proposed language describes the requirements of the written request that must be filed must satisfy the same requirements as those in the California Rules of Court. The reference section is also amended to include the California Rules of Court as well as the updated Rule of Professional Conduct.

## **OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATION**

The broad objective of the regulation is to clarify for litigants that appear before the Board the information necessary to effectively represent themselves or their clients.

The specific benefit anticipated from the regulation is promoting the expeditious and economical resolution of statutorily enumerated disputes between new motor vehicle dealers (franchisees) and their manufacturers or distributors (franchisors). The Board keeps these types of cases from further clogging our already congested courts. It

provides a uniformity of decisions across the state, allowing franchisors and their dealers to conduct their business in compliance with California law. The regulatory amendments bring the Board's regulations up to date with the most recent Rules of Professional Conduct as well as eliminate any possibility of a filing that may result in a breach of client confidentiality.

## **EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS**

The Board conducted an evaluation of the proposed regulations potential inconsistency or incompatibility with existing state regulations and has found that they are neither inconsistent nor incompatible with existing state regulations.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Board has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business:  
The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant, statewide adverse economic impact directly affecting businesses, including the ability of California business to compete with businesses in other states: None.
- Significant effect on housing costs: None.

## **RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT**

The Board concludes that the proposed regulations will not (1) create any jobs within the State of California, (2) eliminate any jobs within the State of California, (3) create any new businesses within the State of California, (4) eliminate any existing businesses within the State of California, or (5) cause the expansion of businesses currently doing business within the State of California.

## **BENEFITS OF THE REGULATION**

The proposed regulation will promote the expeditious and economical resolution of disputes between new motor vehicle dealers and their manufacturers or distributors.

## **SMALL BUSINESS DETERMINATION**

The Board has determined that the proposed regulation will have no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulation, are legally required to enforce the regulation, or derive a benefit from or incur an obligation from the enforcement of the regulation. The proposed regulation merely clarifies case management for franchised new motor vehicle dealers and their franchisors (new vehicle manufacturers or distributors) who choose to file a protest, petition or appeal with the Board.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present comments, statements or arguments with respect to alternatives to the proposed regulation, during the written comment period or at the public hearing, if one is requested.

## **CONTACT PERSONS**

Please direct requests for copies of the proposed text (the “express terms”) of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Ms. Phomsopha at the following address:

Danielle R. Phomsopha, Staff Counsel  
New Motor Vehicle Board  
1507 21<sup>st</sup> Street, Suite 330  
Sacramento, CA 95811  
(916) 327-3129 direct line  
(916) 445-1888 main line  
(916) 323-1632 fax  
[danielle.phomsopha@nmvb.ca.gov](mailto:danielle.phomsopha@nmvb.ca.gov)

The backup contact person for these inquiries is:

Robin P. Parker, Senior Staff Counsel  
New Motor Vehicle Board  
1507 21<sup>st</sup> Street, Suite 330  
Sacramento, CA 95811  
(916) 323-1536 direct line  
(916) 445-1888 main line  
(916) 323-1632 fax  
[robin.parker@nmvb.ca.gov](mailto:robin.parker@nmvb.ca.gov)

#### **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE**

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the initial statement of reasons, the Economic and Fiscal Impact Statement, and all the information upon which the proposal is based. Copies may be obtained by contacting the contact persons identified above.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulation as revised. Requests for copies of any modified regulation should be addressed to the Board contact person or back-up contact person at the addresses indicated above. The Board will accept written comments on the modified regulation for 15 days after the date on which they are made available to the public.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon completion of the Final Statement of Reasons, copies thereof may be obtained by contacting Ms. Phomsopha or Ms. Parker at the above address.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout font can be accessed through the Board's website at [www.nmvb.ca.gov](http://www.nmvb.ca.gov).